

REMARKS

The present Office Action addresses and rejects claims 1-35 and 56-63. Applicant respectfully requests reconsideration in view of the amendments and remarks herein.

Objection to the Drawings

Applicant has corrected FIGS. 5D and 13A to include reference characters for elements 182' and 120'. Some reference characters were inadvertently misnumbered in the drawings previously submitted. The amendments add no new matter to the disclosure. Two replacement sheets including FIGS. 5D and 13A are attached.

Amendment to the Claims

Claim 1 is amended to include the limitations of claims 2 and 3, which are cancelled. Claims 4 and 31 are amended to depend from claim 1, rather than cancelled claim 3. Claims 9, 19, and 20 are amended to correct typographical errors. Claims 27 and 28 are amended to depend from claim 19, rather than claim 21. Claim 56 is amended to clarify that the connecting plate rests against a proximal bearing surface of a rod receiving portion of the bone anchor of the first set and a proximal bearing surface on a rod receiving portion of the bone anchor of the second set. Claims 57 and 58 are amended to correspond to claim 56 and/or to correct typographical errors. Claim 60 is amended to recite that the connecting plate is coupled to a proximal bearing surface of a rod receiving portion of the first bone anchor. Support for these amendments can be found throughout the specification and in the drawings. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 102

Claims 1-3, 17-18, 20, 29, 56, and 60-63 are rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,397,363 (“Gelbard”). Applicant respectfully disagrees.

Independent claim 1 recites a spinal fixation system including at least two bone anchors

having a rod receiving portion, a rod connecting the bone anchors, and a connecting plate extending from a proximal surface of the rod receiving portion of at least one of the bone anchors.

Gelbard does not disclose a connecting plate that extends from a proximal surface of a rod receiving portion of a bone anchor. To the contrary, Gelbard discloses a connecting plate having openings that receives a rod receiving portion of a bone anchor therethrough. The connecting plate therefore does not extend from the proximal surface of the rod receiving portion, but rather is positioned distal of the proximal surface. Accordingly, claim 1, as well as claims 2-3, 17-18, 20, and 29 which depend therefrom, distinguish over Gelbard and represent allowable subject matter.

Independent claim 56 recites a connecting plate that rests against a proximal bearing surface on rod receiving portions of first and second bone anchors. As discussed above, the connecting plate of Gelbard does not rest against the proximal surface of the rod receiving portion, but rather the rod-receiving portion extends through openings in the connecting plate. Claim 56 therefore likewise distinguishes over Gelbard and represents allowable subject matter.

Claim 60 recites a method that includes coupling one end of a connecting plate to a proximal bearing surface of a rod receiving portion of a first bone anchor. For the same reasons discussed above, Gelbard does not teach a connecting plate that is coupled to a proximal bearing surface of a rod receiving portion of a bone anchor. Claim 60, as well as claims 61-63 which depend therefrom, therefore distinguish over Gelbard and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 103

Claims 4-11, 15, and 16 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Gelbard in view of U.S. Patent No. 5,522,816 (“Dinello”). Claims 12-14 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Gelbard in view of Dinello and in further view of U.S. Publication No. 2004/0087949 (“Bono”). Claims 21-27 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Gelbard in view of U.S. Patent No. 5,366,455 (“Dove”). Claims 34, 35, and 59 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Gelbard in view of U.S. Publication No. 2004/0186474 (“Matthis”) and in further view of Dinello. Claim 28 is rejected

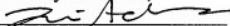
pursuant to 35 U.S.C. § 103(a) as being obvious over Gelbard in view of Dove and in further view of U.S. Patent No. 6,355,038 ("Pisharodi").

None of the secondary references cited above by the Examiner can be relied on to render claims 1, 56, and 60 obvious as no person having ordinary skill in the art would modify Gelbard to have a connecting plate that extends from or rests against a proximal surface of a rod receiving portion of a bone anchor. Gelbard is specifically directed to a plate having openings that receive the rod receiving portion of the bone screw therethrough to allow a closure mechanism to be applied to the rod receiving portion. If the connecting plate were modified to rest against the rod receiving portion, the closure mechanism could not be mated to the rod receiving portion. As a result, the device would be inoperative as there would be no way to lock the connecting plate to the bone anchor. Claims 1, 56, and 60, as well as the claims that depend therefrom, therefore distinguish over Gelbard in view of the various references cited by the Examiner, and thus represent allowable subject matter.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant's amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

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